

HOUSE No. 1677

By Miss Garry of Dracut, petition of Colleen M. Garry and Michael J. Rodrigues relative to the deposit system and recycling of containers under the “bottle law”, so-called. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT TO UPDATE THE BOTTLE DEPOSIT SYSTEM AND LOWER THE COST OF RECYCLING BEVERAGE CONTAINERS IN THE COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. PURPOSE: An economically sound and environ-
2 mentally safe solid waste management strategy includes compo-
3 nents of conservation, source reduction, reuse, recycling and litter
4 control. In order to stimulate the construction of an appropriate
5 infrastructure in an integrated system of solid waste management,
6 business and government must engage in cooperative participation
7 to accomplish these goals. The following statutory changes are
8 necessary in order to stimulate the creation of an appropriate solid
9 waste management infrastructure: expanded access and participa-
10 tion to comprehensive recycling programs, development of com-
11 prehensive litter abatement programs, analysis and expansion of
12 markets for recyclable materials, and facilitation of expanded resi-
13 dential and commercial recycling throughout the Commonwealth.

1 SECTION 2. Section 4A of Chapter 21 of the General Laws, as
2 appearing in the 2002 Official Edition, is hereby amended by
3 inserting after the first paragraph the following new paragraph:—
4 The Commissioner shall establish a program to increase recy-
5 cling opportunities for all property under the control of the Divi-
6 sion of Forests and Parks. The Commissioner shall file a report on
7 the program annually with the Joint Committee on Natural
8 Resources and Agriculture, the Joint Committee on Energy, and

9 the House and Senate Committees on Ways and Means on or
10 before December thirty-first of each year. This report shall con-
11 tain, but not be limited to, activities promoting recycling on prop-
12 erty under the control of the Division of Forests and Parks.

1 SECTION 3. Chapter 21A of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by inserting after
3 Section 18A the following new section:—

4 Section 18B. The Secretary shall establish a program to deter-
5 mine the use of recyclable materials in the Commonwealth. Such
6 program shall include, but not be limited to, a method for deter-
7 mining the percentage of recyclable material that is actually
8 reused rather than discarded. The Secretary shall file a report on
9 the program annually with the Joint Committee on Natural
10 Resources and Agriculture, the Joint Committee on Energy, and
11 the House and Senate Committees on Ways and Means on or
12 before December thirty-first of each year. The report shall contain,
13 but not be limited to, information concerning statewide use of
14 recycled material in the Commonwealth.

1 SECTION 4. Chapter 21H of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by inserting after
3 Section 7 the following new section:—

4 Section 7A. The Department shall establish a program to
5 increase recycling opportunities at public facilities visited by at
6 least five thousand individuals annually, including but not limited
7 to, stadiums, arenas, marinas, airports, theatres, and pedestrian
8 walkways. The Department shall work with MassPort, the Massa-
9 chusetts Cultural Council, the State Racing Commission, the
10 Bureau of State Office Buildings, WasteCap of Massachusetts, and
11 other entities in order to establish a program. The Department
12 shall file a report on the program annually with the Joint Com-
13 mittee on Natural Resources and Agriculture, the Joint Committee
14 on Energy, and the House and Senate Committees on Ways and
15 Means on or before December thirty-first of each year. The report
16 shall contain, but not be limited to, activities promoting recycling
17 at public facilities visited by at least five thousand individuals
18 annually.

1 SECTION 5. Section 33 of Chapter 92 of the General Laws, as
2 appearing in the 2002 Official Edition, is hereby amended by
3 inserting after the first paragraph the following new paragraph:—
4 The Commission shall include the development of recycling
5 opportunities in all new designs and redesigns of reservations.

1 SECTION 6. Section 33 of Chapter 92 of the General Laws, as
2 appearing in the 2002 Official Edition, is hereby amended by
3 inserting after the second paragraph the following new para-
4 graph:—
5 The Commission shall establish a program to increase recycling
6 opportunities in all public reservations located within the metro-
7 politan parks district. The Commission shall file a report on the
8 program annually with the Joint Committee on Natural Resources
9 and Agriculture, the Joint Committee on Energy, and the House
10 and Senate Committees on Ways and Means on or before
11 December thirty-first of each year. The report shall contain, but
12 not be limited to, activities promoting recycling in all public
13 reservations within the metropolitan parks district.

1 SECTION 7. Effective July 1, 2005, Chapter 94 of the General
2 Laws, is hereby amended by striking out section 323F in its
3 entirety and replacing it with the following new section:—
4 Section 323F. Clean Environment Fund.
5 (a) There shall be established on the books of the Common-
6 wealth a separate fund to be known as the Clean Environment
7 Fund (the “Fund”). Amounts deposited in said fund shall be used,
8 subject to appropriation, for programs described in paragraphs (c)
9 through (f) of this section.
10 (b) The Fund shall be governed by the Solid Waste Manage-
11 ment Board (the “Board”). The members of the Board shall con-
12 sist of eleven persons appointed by the Governor, each of whom
13 shall be represented by the following: the Secretary of Environ-
14 mental Affairs, five representatives from the various segments of
15 business and industry being assessed pursuant to Section 323G of
16 Chapter 94 (beverage container manufacturer, wholesaler/distrib-
17 utor, and dealer), two representatives of the solid waste manage-
18 ment and recycling industries, two representatives of statewide

19 environmental organizations, and one representative of organized
20 labor.

21 (c) Not more than sixty-five percent of amounts deposited in
22 the Fund shall be used for recycling collection programs
23 including, but not limited to, municipal performance-based incen-
24 tive grants; unit-based pricing programs; municipal grants for
25 recycling equipment and technical assistance; private sector grants
26 to qualified redemption centers in order to develop innovative
27 materials collection operations; and recycling media and educa-
28 tion campaigns.

29 (d) Not more than fifteen percent of amounts deposited in the
30 Fund shall be used for recycling market development programs
31 including, but not limited to, the recycling loan fund for small
32 recycling businesses; demonstration projects to process and manu-
33 facture recycled products; recycled product purchasing by state
34 agencies; municipal buy recycled programs; and expanded source
35 reduction initiatives.

36 (e) Not more than twenty percent of amounts deposited in the
37 fund shall be used for litter prevention and removal programs
38 including, but not limited to, a state grant program for litter
39 pickup and removal; litter education programs for the public and
40 for schools; research relating to litter control; and enforcement of
41 litter related laws in state/municipal-owned places and areas that
42 are accessible to the public.

43 (f) The amounts deposited in the Fund shall be used to promote
44 and expand waste diversion programs in the Commonwealth. This
45 shall include, but not be limited to, enhancing capabilities to
46 recycle beverage containers in residential and commercial pro-
47 grams, improving access to comprehensive recycling and com-
48 posting programs, providing technical assistance to residential and
49 commercial recycling and composting programs, promoting
50 reduction efforts, improving markets for diverted material, and
51 other such programs as determined by the Board. The Fund shall
52 also support comprehensive litter prevention and control measures
53 including, at a minimum, a statewide litter education and preven-
54 tion campaign, promotion of voluntary and public/private partner-
55 ships for litter control, and coordination of existing litter programs
56 in the state.

57 Subject to the approval of the Board, the Department of Envi-
58 ronmental Protection shall develop model municipal litter preven-
59 tion and control programs. Monies distributed from the Fund, to
60 eligible municipalities, shall be used solely to supplement litter
61 pickup and removal activities. To be eligible for a grant under this
62 section, a municipality must certify to the department the adoption
63 of at least one of the model programs.

64 A sum of not less than \$250,000 shall be allocated to WasteCap
65 of Massachusetts on an annual basis for developing programs that
66 shall include, but are not limited to, enhancing the ability of
67 existing Massachusetts' manufacturers to utilize and process
68 recovered materials; assisting businesses and technologies in the
69 Commonwealth; identifying support needs (i.e., research and tech-
70 nical assistance); and addressing waste reduction and recycling
71 issues confronted by businesses (i.e., Awareness Campaigns,
72 Business Recycling Cooperatives, Buy Recycled Programs).

73 (g) The Board shall submit to the Secretary of Administration
74 and Finance, the House and Senate Committees on Ways and
75 Means, the Joint Committee on Energy, and the Joint Committee
76 on Natural Resources and Agriculture an annual report of its
77 activities and an evaluation of any and all programs entered into
78 during the course of the fiscal year.

1 SECTION 8. Section 323F of Chapter 94 is hereby amended by
2 adding the following new section:—

3 323G. Assessment.

4 Between January 1, 2008 and December 31, 2008 an amount
5 not to exceed five million six hundred thousand dollars
6 (\$5,600,000) shall be deposited into said Fund based on assess-
7 ments levied by the Commissioner of Revenue ("Commissioner")
8 as follows:

9 (a) Distributors/wholesalers shall contribute the sum of five
10 million two hundred sixty-four thousand dollars (\$5,264,000). The
11 Commissioner shall compute the assessment for each distrib-
12 utor/wholesaler of these beverages based on the distributor/whole-
13 saler's pro-rated share of the total number of beverage containers
14 sold within the state between January 1, 2006 and December 31,
15 2006. The Commissioner shall undertake the necessary steps to
16 obtain beverage container sales information for this period, shall

17 treat the information as confidential, and, by June 30, 2007, shall
18 compute each distributor/wholesaler's assessment and notify each
19 distributor/wholesaler of his assessment.

20 (b) Beverage container manufacturers shall contribute the sum
21 of two hundred eighty thousand dollars (\$280,000). After consul-
22 tation with the Can Manufacturers Institute, Glass Packaging
23 Institute, American Plastics Council, and the Steel Recycling
24 Institute, the Board shall file a report with the Commissioner, no
25 later than June 30, 2007, detailing the assessment on beverage
26 container manufacturers.

27 (c) Dealers shall contribute the sum of fifty-six thousand dol-
28 lars (\$56,000). This assessment shall be in addition to any liability
29 of dealers who may also be subject to assessments as
30 distributor/wholesalers under paragraph (a). After consultation
31 with the Massachusetts Food Association and the Massachusetts
32 Package Store Association, the Board shall file a report with the
33 Commissioner, no later than June 30, 2007, detailing the assess-
34 ment on dealers.

1 SECTION 9. The effective date of Sections 10 through 19 is
2 January 1, 2008.

1 SECTION 10. Chapter 94 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by striking section
3 three hundred and twenty-one and replacing it with the following
4 new section:—

5 Section 321. DEFINITIONS. The following definitions shall,
6 unless the context clearly requires otherwise, have the following
7 meaning:

8 "Beverage," carbonated, noncarbonated-alcoholic and noncar-
9 bonated-nonalcoholic drinks intended for human consumption
10 except milk and dairy derived products, infant formula, or medical
11 food.

12 "Beverage container," any sealable bottle, can, jar, or carton,
13 which is primarily composed of glass, metal, plastic or any combi-
14 nation of those materials and is produced for purpose of con-
15 taining a beverage. This definition shall not include containers
16 made of biodegradable material.

17 “Beverage container manufacturer,” any person who engages in
18 the manufacture or fabrication of beverage containers.

19 “Carbonated beverage,” soda water or similar carbonated soft
20 drinks, mineral water, and beer and other malt beverages intended
21 for human consumption.

22 “Dealer,” any person including any operator of a vending
23 machine who sells, offers to sell or engages in the sale of beverages in beverage containers to consumers in the state.

25 “Distributor/wholesaler,” any person who engages in the sale of
26 beverages in beverage containers directly to dealers in the state,
27 including any manufacturer who engages in such sales.

28 “Infant formula,” any liquid food described or sold as an alternative for human milk for the feeding of infants.

30 “Manufacturer,” any person who bottles, cans, or otherwise
31 places beverages in beverage containers for sale to a
32 distributor/wholesaler or dealer.

33 “Medical food,” a food or beverage that is formulated to be
34 consumed, or administered enterally under the supervision of a
35 physician, and that is intended for specific dietary management of
36 diseases or health conditions for which distinctive nutritional
37 requirements, based on recognized scientific principles, are established by medical evaluation. A “medical food” is a specially formulated and processed product, for the partial or exclusive
39 feeding of a patient by means of oral intake or enteral feeding by
40 tube, and is not a naturally occurring foodstuff used in its natural
41 state. “Medical food” includes any product that meets the definition of “medical food” in the federal Food, Drug, and Cosmetic
43 Act (21 U.S.C. Sec. 360ee (b)(3)).

45 “Noncarbonated-alcoholic beverage,” any liquid intended for
46 human consumption and containing one-half of one percent or
47 more of alcohol by volume at sixty degrees Fahrenheit, including
48 wine and wine-based drinks, spirits and spirit-based drinks and
49 hard cider.

50 “Noncarbonated-nonalcoholic beverage,” fruit and vegetable
51 juice, still water, iced tea, sports drinks and other noncarbonated
52 drinks intended for human consumption, except for milk and dairy
53 derived products, infant formula, or medical food.

54 “Sales within the state,” within the exterior limits of the state of
55 Massachusetts and includes all territory within these limits owned
56 by or ceded to the United States of America.

1 SECTION 11. Chapter 94 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by striking section
3 three hundred and twenty-two.

1 SECTION 12. Chapter 94 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by striking section
3 three hundred and twenty-three.

1 SECTION 13. Chapter 94 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by striking section
3 three hundred and twenty-three B.

1 SECTION 14. Chapter 94 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by striking section
3 three hundred and twenty-three C and replacing it with the
4 following new section:—

5 Section 323C. Abandoned deposit amounts; determination.

6 Any amounts that are or should be in a bottler’s or distributor’s
7 Deposit Transaction Fund and that are in excess of the sum of (a)
8 income earned on amounts in said account and (b) the total
9 amount of refund values received by said bottler or distributor for
10 non-reusable beverage containers shall be deemed to constitute
11 abandoned deposit amounts. Income earned on said fund may be
12 transferred from said fund for use as funds of the bottler or dis-
13 tributor.

1 SECTION 15. Chapter 94 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by striking section
3 three hundred and twenty-three D and replacing it with the
4 following new section:—

5 Section 323D. Transfer of abandoned deposit amounts.

6 Each bottler or distributor shall turn over to the commissioner
7 of revenue any deposit amounts deemed to be abandoned, pur-
8 suant to section three hundred and twenty-three C. Such amounts
9 may be paid from the Deposit Transaction Fund. Amounts col-

9 lected by the commissioner of revenue pursuant to this section
10 shall be deposited into the Clean Environment Fund, established
11 pursuant to section three hundred and twenty-three F.

1 SECTION 16. Chapter 94 of the General Laws, as appearing in
2 the 2002 Official Edition is amended by striking section three
3 hundred and twenty-three E.

1 SECTION 17. Chapter 94 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by striking section
3 three hundred and twenty-five.

1 SECTION 18. Chapter 94 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by striking section
3 three hundred and twenty-six and replacing it with the following
4 section:—

5 Section 326. Administration; rules and regulations.

6 The secretary of environmental affairs shall administer the pro-
7 visions of sections three hundred and twenty-one, three hundred
8 and twenty-three F, and three hundred and twenty-four. Said sec-
9 retary shall promulgate and from time to time revise rules and reg-
10 ulations to effectuate the purposes of said sections.

11 The commissioner of revenue shall administer the provisions of
12 sections three hundred and twenty-three C, three hundred and
13 twenty-three D, and three hundred and twenty-three G. The collec-
14 tion of revenues pursuant to sections three hundred and twenty-
15 three D and three hundred and twenty-three G by said
16 commissioner shall, to the extent consistent with this chapter, be
17 governed by the provisions of chapter sixty-two C.

18 The commissioner of revenue shall promulgate and from time
19 to time revise rules and regulations to effectuate the purposes of
20 said sections. Said rules and regulations shall include a provision
21 to permit manufacturers, wholesalers, distributors and retailers to
22 borrow, without any interest charge, against their deposit transac-
23 tion funds subject to such terms and conditions as the commis-
24 sioner deems appropriate.

25 Said secretary shall determine through rules and regulations
26 which plastic bottles and rigid plastic containers may be exempt
27 from the labeling requirements of section three hundred and

28 twenty-three A, including but not limited to the following: (1)
29 readily identifiable plastic bottles and rigid plastic containers; (2)
30 plastic bottles and rigid plastic containers for which there is no
31 technological capability for recycling, reclamation or reuse; and
32 (3) plastic bottles and rigid plastic containers for which recycling,
33 reclamation or reuse is not economically feasible.

1 SECTION 19. Chapter 94 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by striking section
3 three hundred and twenty-seven and replacing it with the
4 following section:—

5 Section 327. Enforcement; penalty; interest.

6 The attorney general and district attorneys shall enforce the
7 provisions of sections three hundred and twenty-one to three hun-
8 dred and twenty-seven, inclusive. Any manufacturer, wholesaler,
9 distributor, or retailer who knowingly violates any provisions of
10 sections three hundred and twenty-one to three hundred and
11 twenty-six, inclusive, shall be subject to a civil penalty for each
12 violation of not more than one thousand dollars.

13 Any manufacturer, wholesaler, distributor or retailer failing to
14 make full and timely payments as required by section three hun-
15 dred and twenty-three G shall pay interest on any unpaid amounts
16 at the rate of one and one-half percent for each month or part
17 thereof until payment is made in full.